

The CASE of the Earl of Sandwich, Lord Viscount Lisburn, Mr. Grevile, and their Ladies Appellants, against the Earl of Litchfield and his Son Respondents.

TH E Mannor of *Adderbury* in the County of *Oxon*, and several Lands thereof above 600 *l. per Ann.* having been in the Family of the late Earl of *Rochester* for several Generations, part thereof being Free-hold in Fee-simple, and other part thereof Copy-hold of Inheritance to them and their Heirs, and other part thereof Lease hold held of the Bishop of *Winchester* for three Lives, and all of them held together without any Distinction of what was Free-hold, Copy-hold or Lease-hold; the Leases as the Lives dropt, being from time to time renewed by the Bishop of *Winchester* on easie Fines for the benefit of that noble Family, who were Barons of that place, where was their only Seat: One Moiety whereof stood on the Free-hold, and the other Moiety on the Lands, Lease hold or Copy hold.

1659. That during the late Wars, when there was no possibility of renewing the Bishop's Leases, *Henry* late Earl of *Rochester*, who was the last life therein died, Anno 1659. in Exile, leaving Countess *Anne* his Relict, and *John* Earl of *Rochester* his only Son an Infant of about Twelve Years Old.

1660. Upon the Restauration of King *Charles* the II. and of the Bishops and their Estates, Countess *Anne* the Mother and Guardian of Earl *John*, applied to Doctor *Duppa*, then Bishop of *Winchester*, and obtained from him in regard of her late Husband's Loyalty and Sufferings, and for the benefit of his Son Earl *John* for 2000 *l.* Fine (which was worth 6000 *l.* if the same had been to have been sold to a Stranger) new Leases of the Mannor and Scite of *Adderbury* for three Lives, and as any of the Lives fell renewed, the Leases at very easie Fines, for the Lives of Earl *John*, his Lady, and afterwards of Earl *Charles*, and held and enjoyed the Free hold, Copy-hold, as well as the said Lease-hold Lands, and received the Rents and Profits thereof from 1660. until the 8th of March 1695. (when the died) most part of which time was during the Minorities of Earl *John*, Earl *Charles*, and the Ladies the Appellants.

1695. Upon her Death, the Earl of *Litchfield*, whose Family had never any pretence to this Estate under some general Words, in her Will claimed all the Free-hold, Copy-hold and Lease-hold premises to him, and his Sons successively in Tail-mail pretending that the Countess *Anne* (supplying her Husband with Money during his Exile) was without any Agreement, Deed or Conveyance, become a Purchaser of the said Free-hold and Copy-hold Estates.

1696. The Earl of *Sandwich*, Lord *Lisburn*, and Mr. *Grevile*, and their Ladies exhibited their Bill in Chancery, That they in right of their Ladies, as being the Daughters and Heirs to the said *John* Earl of *Rochester*, and Sister and Heir to the said *Charles* late E. of *Rochester*, might be let into the Possession of the Free-hold, and Copy-hold, and have an Assignment of the Lease-hold Premises, and to have an Account of the Rents and Profits thereof, to which the Respondents put in their Answers.

29 June. and 22 of July last. On hearing the Cause, the Appellants Bill as to the Lease-hold was dismissed, and a Trial at Law directed to try, whether any, and how much of the Estate in *Adderbury* was Free hold, or Copy-hold of Inheritance, belonging to Earl *Henry* at his Death, and the Account of the Profits thereof, was thereby respited, and the Possession of such parts of the Lease-hold as was not then the Possession of the Earl of *Litchfield*, was to be delivered to his Lordship, and the Rents, Arrear, and growing Rents thereof to be paid to him.

Which Orders, the Appellants humbly hope shall be reversed; and the said Lease-hold Lands be decreed to them; for that the Appellants, as they conceive, have as good a Right to the Lease-hold, as to the Free hold, and Copy-hold; and that the several renewals of the said Leases, ought to be adjudged a Trust for the Appellants, for that it was not in the power of the Countess who acted as a Guardian and Trustee for Infants, to renew to her own Use, or to dispose the premises to a Stranger.

1 Object. That the Bishops Lease being determined in 1659. Countess *Anne* in 1660, purchased the same of the then Bishop to Her and her Heirs for three Lives, for a consideration paid by Her, and not by any Money raised out of Earl *John*'s Estate; and that quietly enjoying the same from the time of such Purchase in 1660, until the time of her Death, in 1695, and renewing the Lives as they drop'd with her own Money, She did by Deed and Will duely convey the same with other Lands, to Trustees and their Heirs in Trust to pay her Debts and Legacies, and then for the Benefit of the Earl of *Litchfield* and his Sons, as aforesaid.

1 Answer. It is humbly conceived, that Countess *Anne* was not rightful owner of either the Free-hold, Copy-hold or Lease-hold, nor had she any sufficient power by Deed or Will to settle or dispose of any of them for the benefit of the Respondents.

For these Reasons,

1. For that the said Leases and Estates having been in the *Rochester* Family for several Generations, and held altogether in Unity of Possession without any Distinction; Countess *Anne* who was Mother and Guardian of Earl *John* an Infant, could not, and in Conscience ought not, to take the Advantage of the said Leases, being expired on the Death of her Husband when he was in Exile, and the Bishops deprived, and their Estates sequestred and sold, and of the Infancy of her Son for whom she was Guardian and Trustee; for should that once be admitted, that Mothers, Guardians or Trustees should make such Advantages of Infants and their Estates, many Infants would be in a very miserable Condition, if their Mothers, Guardians or Trustees, when they see any thing is beneficial that belongs to the Infant, may by laying down their own Money take it to their own use, and so invert the Rules of Justice and Equity, which are, that they may do any thing for the Infant's Advantage, but nothing to his prejudice; and by many Cases and Precedents in Chancery, such proceedings and Attempts of Guardians have been corrected and set aside as Fraudulent.

2. By Countess *Anne*'s Actings and the proofs in the Cause, it appears that she took and the Bishops granted the new Leases for so inconsiderable a Fine as 2000 *l.* (when the same was worth 6000 *l.*) in Consideration of Earl *Henry*'s Loyalty and Hardship (he being his intimate Friend and fellow Sufferer; and for the Benefit of Earl *John* his Son, then an Infant, in whose right she only then acted, and might if she had pleased, taken up the 2000 *l.* Fine upon the Credit of the said Leases. And it is probable she so did, for that the first 1000 *l.* that was paid appears by the Respondents own proof to be borrowed by her.

3. Countess *Anne*'s Enjoyment did no more give her a Right to the Lease-hold, than to the Free-hold and Copy-hold, all which she managed as Guardian of the Infant as aforesaid; and the greatest part of the time of her Enjoyment was during Infancy: And therefore it is a very absurd inference they draw from the Duty and Gratitude of her Son that gave her no Disturbance as to either Free-hold, Copy-hold, or Lease-hold, altho' it is proved he took notice of the hardship his Morher did him therein, tho' in Duty and Tenderness, and in expectation that all upon her Death would come to him or his Children; he was silent and Prosecuted, no Suit for the Premises.

4. Earl *John* by his Silence had not forfeited his Title to the Free-hold and Copy-hold, or extinguished his Right to the Lease-hold; and therefore Countess *Anne* had no Right or Power by Deed or Will, either to Settle or Devise the same as She has done.

2 Object. That Countess *Anne* laid out about 2000 *l.* in Repairing and Building the Capital Messuage, and out of Gratitude and Kindness to the Earl of *Litchfield*, Countess *Anne* made such Settlement. She having received 1200 *l. per Ann.* out of his Estate for 60 Years; and 5000 *l.* more out of his Family.

2 Answer. The Moneys laid out in the Buildings was on the Free-hold, Lease-hold and Copy hold without any distinction; which is a strong Argument that they were to go all one way, and not that the Lease hold should attract the Free-hold, and Copy-hold, however Countess *Anne* built for her Pleasure, and enjoyed the Benefit of it so long as to be sufficiently recompenced out of the Rents and Profits for all the Moneys that she laid out either for Fines or Buildings: And She ought not out of Gratitude to one Family, make a satisfaction out of the Estate of the other, especially when She had only a Joynture settled in consideration of a Portion paid.

3 Object. That Countess *Anne* having spent great Sums in the support of Earl *Henry*, and in the Maintenance and Education of Earl *John*, Earl *Charles*, and the Ladies having given Countess *Anne* general Releases; they had thereby Released and Extinguished all their Right to the Premises.

3 Answer. The Countesses whole real and personal Estate belonged to Earl *Henry* upon his Marriage with her during his Life, and what the Countess spent on Earl *John*, and laid out in Building, and the Expectation he had from her, and his Duty to her as his Mother did prevail on him, not to take Possession of the Estate, but he always took himself to have as equal Right to the Lease-hold, as to the Free-hold and Copy-hold, which the Countess likewise enjoyed, and there was no dispute or question of it in his time, and Earl *Charles* died soon after an Infant, and the Appellants the Ladies Releases were only as the Countess was their Guardian, and received the Profits of part of the Estate they had by their Mother, and is so recited in those Releases.

Wherefore upon the whole matter, it is humbly hoped that the said Orders shall be reversed as to the said Lease-hold Estates, and the renewals of such Leases be Decreed a Trust for the Appellants, it appearing for the Reason above mention.

Will. Comper,

B. Shower.